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**ARIZONA ATTORNEY GENERAL**

April 18, 1986

The Honorable Peter Corpstein, Jr.  
Arizona State Senator  
State Capitol, Senate Wing  
Phoenix, Arizona 85007

Re: I86-045 (R85-106)

Dear Senator Corpstein:

You have asked whether monies appropriated to the Department of Corrections from the general fund by Laws 1985 (1st Reg. Sess.) Ch. 310 (Emergency Prison Beds) which were not exempted from lapsing pursuant to A.R.S. § 35-190 may be transferred by the Joint Legislative Budget Committee during the "thirteenth month" of the fiscal year that ended June 30, 1985, into a class of appropriations that is exempt from lapsing (construction or other permanent improvements, see A.R.S. § 35-190(D)) and then be transferred back into the class of appropriation from which the appropriation initially was transferred, with the result that the monies so appropriated and transferred would not lapse at the end of July 1985 (the "thirteenth month") but would be available for expenditure during fiscal year 1985-1986.

In our opinion the transfers were not authorized and did not affect the lapsing of the appropriation on July 31, 1985.

Under A.R.S. § 35-173 a budget unit, with the approval of the Department of Administration, may transfer funds from one class or subclass of appropriation to another and between and within programs if funds are appropriated to the budget unit by programs. In certain instances a budget unit also must obtain the recommendation of the Joint Legislative Budget Committee as well as the approval of the Department of Administration before transferring funds. For example, a

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transfer within a budget unit of monies appropriated for land, buildings and improvements may be made only upon the recommendation of the Joint Legislative Budget Committee. A.R.S. § 35-173(D). Likewise, no transfer to or from the appropriations classes "personal services" or "employee related expenditures" is permitted unless recommended by the Joint Legislative Budget Committee and approved by the Director of the Department of Administration. A.R.S. § 35-173(E).

The intent of A.R.S. § 35-173 is that during a fiscal year a budget unit should have considerable flexibility in adjusting the amounts of monies available to it for necessary expenditures. Nothing in A.R.S. § 35-173 addresses the availability of appropriations for expenditures after June 30 of a fiscal year or the lapsing of appropriations or the effect of the lapsing of appropriations. Those matters are governed by A.R.S. § 35-190.

A.R.S. § 35-190(A) provides:

Except as provided in § 35-191 no officer or other agency of the state shall, after the close of any fiscal year, incur or order or approve the incurring of any obligation or expenditure under any appropriation made by the legislature for such fiscal year, and no expenditure shall be made from or be charged to any appropriation made by the legislature for any fiscal year which has expired at the time the obligation for such expenditure was incurred.

This subsection means simply that after June 30 of any year, except for administrative adjustments as provided in § 35-191 of claims that are defective or presented late, no new obligations may be incurred under, or any expenditures made from appropriations for the fiscal year that expired on June 30. The only other exceptions are: 1) payments during the month following the close of the fiscal year (the "thirteenth month") for obligations incurred, or to perform contracts entered into, during the fiscal year, see A.R.S. § 35-190(B) and (C); 2) performance of obligations of contracts for

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construction or other permanent improvements, see A.R.S. § 35-190(D), and 3) appropriations specifically exempted from § 35-190 by the legislation enacting the appropriation.

The appropriation about which you inquired, not having been exempted from the operation of A.R.S. § 35-190, was subject to the disposition mandated in A.R.S. § 35-190(A), and neither A.R.S. § 35-173 nor § 35-190 authorized anyone to take any action after June 30, 1985 that could have had the effect of authorizing continuing expenditures and the incurring of new obligations under the said appropriation after June 30, 1985. As mandated by A.R.S. § 35-190 at the close of business on June 30, 1985, the appropriation was no longer available for new expenditures and at the close of business on July 31, 1985 it lapsed.

Sincerely,



BOB CORBIN  
Attorney General

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